

Mary Tudela  
Chair

Michael Curtis  
Vice-Chair

Maureen Tabura  
Secretary

Members:  
Ryan de la Pena  
Calvin Murashige  
Brad Nagano  
Mia Shiraishi

**COUNTY OF KAUAI BOARD OF ETHICS**  
**NOTICE OF MEETING AND AGENDA**

Friday, January 20, 2017  
1:00 p.m. or shortly thereafter  
Mo'ikeha Building, Liquor Conference Room 3  
4444 Rice Street, Lihue, HI 96766

*Oath of Office for Ryan de la Pena, Maureen Tabura (reappointees) and Mia Shiraishi (new appointee)*

**CALL TO ORDER**

**APPROVAL OF MINUTES**

Open Session Minutes of December 16, 2016

**COMMUNICATION**

BOE 2017-01

Memo dated 12/16/16 from Councilmember Arthur Brun to the County Council regarding a possible conflict of interest relating to Bill No. 2643 repealing Article 23 of Chapter 22 relating to Pesticides and Genetically Modified Organisms

**REQUEST FOR AN ADVISORY OPINION**

RAO 17-001

Request received 12/12/16 From Arthur Brun, Councilmember, as to whether there is a conflict of interest for him to participate in County Council proceedings and voting on Bill No. 2643 repealing Article 23 of Chapter 22 relating to pesticides and genetically modified organisms since he is also employed by Syngenta

ROA 17-002

Request received 1/6/17 From Kunani Fu, Director of Housing, whether there is a conflict of interest under the Code of Ethics in holding the position as the Housing Director for KCHA and the granting of her request to waive the CFR 982.161 item 3, which "prohibits the tenancy of the unit if the owner is any public official, member of governing body, or State or local legislators, who exercise functions or responsibilities with respect to the program."

*An Equal Opportunity Employer*

## **DISCLOSURES**

1. Thomas J. Canute (Board of Water Supply)
2. Kilipaki K.F. Vaughn (Deputy Fire Chief)
3. Jade K. Fountain-Tanigawa (County Clerk)
4. JoAnn A. Yukimura (County Council)
5. Paul N. Endo (Liquor Control Commission)
6. Laurie K. Ho (Board of Water)
7. Roy M. Morita (Police Commission)
8. Mia Shiraishi (Board of Ethics)
9. Sean M Mahoney (Planning Commission)

## **EXECUTIVE SESSION**

Pursuant to H.R.S. §92-4, 92-9 (a)(1-4) (b), and §92-5 (a) (4), the purpose of this executive session is to receive and approve Executive Session minutes and to consult with the Board's legal counsel on issues pertaining to the Board's and the County's powers, duties, privileges, immunities, and/or liabilities as they may relate to this item, deliberate and take such action as appropriate.

**ES-001**

Executive Session Minutes of December 16, 2016

## **RETURN TO OPEN SESSION**

Ratify Board of Ethics actions taken in Executive Session for items: **ES-001**

## **ANNOUNCEMENTS**

Next Meeting: Friday, February 17, 2017 – 1:00 p.m., Mo'ikeha Building, Liquor Conference Room

## **ADJOURNMENT**

## **NOTICE OF EXECUTIVE SESSION**

Pursuant to Hawaii Revised Statutes §92-7 (a), the Commission may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a).

c: Nicholas Courson, Deputy County Attorney

## **PUBLIC COMMENTS and TESTIMONY**

Persons wishing to offer comments are encouraged to submit written testimony at least 24-hours prior to the meeting indicating:

1. Your name and if applicable, your position/title and organization you are representing;

2. The agenda item that you are providing comments on; and
3. Whether you will be testifying in person or submitting written comments only.
4. If you are unable to submit your testimony at least 24 hours prior to the meeting, please provide 10 copies of your written testimony at the meeting clearly indicating the name of the testifier; and

While every effort will be made to copy, organize and collate all testimony received, materials received on the day of the meeting or improperly identified may be distributed to the members after the meeting is concluded.

The length of time allocated to persons wishing to present verbal testimony may be limited at the discretion of the chairperson or presiding member.

Send written testimony to:

Board of Ethics  
Office of Boards & Commissions  
4444 Rice Street, Suite 150  
Līhu'e, HI 96766  
Fax: 241-5127 Phone: 241-4919

SPECIAL ASSISTANCE

If you need an alternate format or an auxiliary aid to participate, please contact the Boards & Commissions Support Clerk at 241-4919 at least five (5) working days prior to the meeting.

**DRAFT To Be Approved**

COUNTY OF KAUAI  
Minutes of Meeting  
OPEN SESSION

Board/Committee:		BOARD OF ETHICS		Meeting Date	December 16, 2016	
Location	Mo'ikeha Building, Liquor Conference Room 3			Start of Meeting: 1:02 p.m.	End of Meeting: 1:56 p.m.	
Present	Chair Ryan de la Pena; Vice Chair Mary Tudela; Secretary Maureen Tabura (1:03 p.m.). Members: Michael Curtis; Calvin Murashige Staff: Deputy County Attorney Nicholas Courson; Boards & Commissions Office: Support Clerk Barbara Davis; Administrator Jay Furfaro					
Excused	Member Brad Nagano					
Absent						
SUBJECT		DISCUSSION			ACTION	
Call To Order					Chair de la Pena called the meeting to order at 1:02 p.m. with 5 members present.	
Executive Session					Ms. Tudela moved to go into Executive Session at 1:02 p.m. Mr. Murashige seconded the motion.  Attorney Courson stated Pursuant to H.R.S. §92-4, 92-9 (a)(1-4) (b), and §92-5 (a) (2) and (4), the purpose of this executive session is to receive and approve Executive Session minutes; to review and approve the final disposition of a complaint identified as BOE 16-002; to review departmental policies as related to a complaint identified as BOE 16-003, and to consult with the Board's legal counsel on issues pertaining to the Board's and the County's powers, duties, privileges, immunities, and/or liabilities as they may relate to this item, deliberate and take such action as appropriate for ES-016, ES-017 and ES-018.	

SUBJECT	DISCUSSION	ACTION
<b>Return to Open Session</b>	<u>Ratify Board of Ethics actions taken in Executive Session for items: ES-016; ES-017 and ES-018</u>	Motion to go into Executive Session carried 4:0 Ms. Tabura entered the meeting at 1:03 p.m.  Ms. Tudela moved to ratify items for ES-016; ES-017 and ES-018. Mr. Murashige seconded the motion. Motion carried 5:0
<b>Approval of Minutes</b>	<u>Regular Open Session Minutes of November 18, 2016</u>  Ms. Tabura noted for the record that she was listed as present for the meeting but she was not in attendance.	  Mr. Curtis moved to accept the minutes with corrections. Ms. Tudela seconded the motion. Motion carried 5:0
<b>Business</b>	<u>BOE 2016-12 Election of Chair, Vice Chair and Secretary</u>	Mr. Murashige nominated and moved to ratify Mary Tudela for Chair. Mr. Curtis seconded the motion. Motion carried 5:0  Mr. Murashige nominated Mike Curtis for Vice Chair. Ms. Tabura seconded the motion. Motion carried 5:0  Ms. Tudela recommended that Maureen Tabura continue as Secretary. Mr. Murashige seconded the motion. Motion carried 5:0
<b>Disclosures</b>	<ol style="list-style-type: none"> <li>1. <u>Arthur James Brun (County Council)</u></li> <li>2. <u>Scott Kiichi Sato (Deputy County Clerk)</u></li> <li>3. <u>Derek SK Kawakami (County Council)</u></li> <li>4. <u>Mason Kamalani Chock (County Council)</u></li> <li>5. <u>Ross Kiyoshi Kagawa (County Council)</u></li> <li>6. <u>Arryl Jordan Kaneshiro (County Council)</u></li> </ol>	

SUBJECT	DISCUSSION	ACTION
7.	<p><u>Melvin F Rapozo (County Council)</u></p> <p>Mr. Kawakami needs to add his County salary to the income section and convert the number of shares shown to a percentage.</p>	<p>Ms. Tudela moved to approve and deem complete Disclosures 1, 2, 4, 5, 6, &amp; 7 and return Mr. Kawakami's to include County salary and percentage shares of ownership. Ms. Tabura seconded the motion. Motion carried 5:0</p>
<b>Announcements</b>	<p>Mr. Furfaro said we are moving next year's standard training to the second quarter of the year (April, May, June). Mr. Furfaro then explained the number of commissioners being sought for the various new and on-going boards and commissions. We also have an opportunity to work with the Office of Hawaiian Affairs and the Native Hawaiian Legal Corporation for some training in January. We were only allocated 40 seats for the County so all Commissions did not necessarily get invitations until we got a better idea of how our RSVPs are working. We have 3 vacancies and today is the last day to identify who is going to be participating in that training. Mr. Furfaro asked if there were any Board members interested in participating in this event on Wednesday, January 11. Mr. Furfaro also announced that Barbara Davis is retiring at the end of this month. Cherisse Zaima will be assisting with the meeting(s) in the interim.</p> <p>Next Meeting: Friday, January 20, 2017 – 1:00 p.m.</p>	
<b>Adjournment</b>		<p>Chair de la Pena adjourned the meeting at 1:56 p.m.</p>

Submitted by: Barbara Davis, Staff Support Clerk Reviewed and Approved by: Ryan de la Pena, Chair

( ) Approved as circulated. ( ) Approved with amendments. See minutes of \_\_\_\_\_ meeting.

**COUNTY COUNCIL**

Mel Rapozo, Chair  
Ross Kagawa, Vice Chair  
Arthur Brun  
Mason K. Chock  
Arryl Kaneshiro  
Derek S.K. Kawakami  
JoAnn A. Yukimura



Council Services Division  
4396 Rice Street, Suite 209  
Lihu'e, Kaua'i, Hawai'i 96766

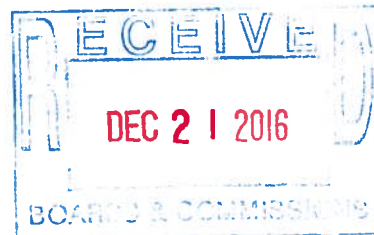
**OFFICE OF THE COUNTY CLERK**

Jade K. Fountain-Tanigawa, County Clerk  
Scott K. Sato, Deputy County Clerk

Telephone: (808) 241-4188  
Facsimile: (808) 241-6349  
E-mail: cokcouncil@kauai.gov

**MEMORANDUM**

December 16, 2016



TO: Mel Rapozo, Council Chair  
and Members of the Kaua'i County Council

FROM: Arthur Brun, Councilmember *AB*

RE: **POSSIBLE CONFLICT OF INTEREST RELATING TO  
BILL NO. 2643, REPEALING ARTICLE 23 OF CHAPTER 22,  
RELATING TO PESTICIDES AND GENETICALLY MODIFIED  
ORGANISMS**

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Pursuant to Section 20.04(B) of the Kaua'i County Charter, Section 3-1.9 of the Kaua'i County Code 1987, as amended, and Rule No. 8 of the Rules of the Council of the County of Kaua'i, I hereby provide written disclosure on the record of a possible conflict of interest regarding Bill No. 2643, repealing Article 23 of Chapter 22, relating to pesticides and genetically modified organisms.

On December 12, 2016, I sent a request to the Board of Ethics to inquire as to any conflict that may exist regarding my participation in Bill No. 2643 because I am an employee of Syngenta Seeds on Kaua'i. I have been notified that my request will not appear on the Board of Ethics' agenda until January 20, 2017. In light of the above, I will recuse myself from the aforementioned item until I receive a response from the Board of Ethics.

Should you have any questions, please feel free to contact me. Thank you for your attention to this matter.

JA:lc

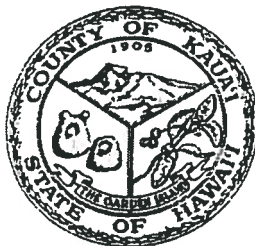
cc: January 12, 2017 Council Meeting Agenda  
County of Kaua'i Board of Ethics ✓  
Council Services Staff

*BOE 2017-01*



**COUNTY COUNCIL**

Mel Rapozo, Chair  
Ross Kagawa, Vice Chair  
Arthur Brun  
Mason K. Chock  
Arryl Kaneshiro  
Derek S.K. Kawakami  
JoAnn A. Yukimura



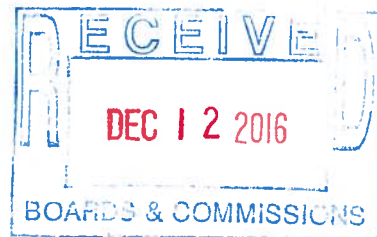
**OFFICE OF THE COUNTY CLERK**

Jade K. Fountain-Tanigawa, County Clerk  
Scott K. Sato, Deputy County Clerk

Telephone: (808) 241-4188  
Facsimile: (808) 241-6349  
E-mail: cokcouncil@kauai.gov

**Council Services Division**  
4396 Rice Street, Suite 209  
Līhu'e, Kaua'i, Hawai'i 96766

December 12, 2016



Ryan de la Peña, Chairperson  
and Members of the Board of Ethics  
c/o Office of Boards & Commissions  
4444 Rice Street, Suite 150  
Līhu'e, Hawai'i 96766

Dear Chair de la Peña and Members of the Board of Ethics:

I am writing to request that the Board of Ethics provide me with an advisory opinion regarding my participation in County Council proceedings and voting on Bill No. 2643, repealing Article 23 of Chapter 22, relating to pesticides and genetically modified organisms (See Enclosed).

By way of background, SECTION 1 of Bill No. 2643 lists the following findings and purpose: "The Kaua'i County Council finds that by Judgment issued in Syngenta Seeds, Inc., et al. v. County of Kaua'i, Civ. No. 14-00014 BMK (D. Haw. filed Aug. 25, 2014), the Court declared Ordinance No. 960, codified as Chapter 22, Article 23 of the Kaua'i County Code 1987, as amended, "is preempted by state law and is therefore invalid." On November 18, 2016, the District Court's Judgment was affirmed by the United States Court of Appeals for the Ninth Circuit in Syngenta Seeds, Inc., et al. v. County of Kaua'i et al., No. 14-16833, D.C. No. 1:14-cv-00014-BMK. Accordingly, the purpose of this Bill is to repeal the invalid law."

In addition to my service as a Councilmember, I am an employee of Syngenta on Kaua'i, and have been so employed since 2004. However, neither I nor any member of my immediate family is "an owner, officer, executive director or director of" Syngenta (Subsection 20.04.B. of the Kaua'i County Charter). Additionally, the law that would potentially be repealed, Chapter 22, Article 23 of the Kaua'i County Code 1987, as amended, has already been invalidated by the United States Court of Appeals for the Ninth Circuit and the County Council's action in effectuating the formal repeal would simply remove the already invalid law from the Code.

RAO 17-001

Chair de la Peña and Members of the Board of Ethics  
Re: Advisory Opinion  
December 12, 2016  
Page 2

Please note that the tentative Council schedule for Bill No. 2643 is: December 14, 2016 First Reading, January 12, 2017 Public Hearing, January 19, 2017 Committee Meeting, and January 25, 2017 Second and Final Reading. Accordingly, an expedited response at your earliest convenience would be greatly appreciated.

Thank you for your consideration and assistance in this matter. Should you need additional information, you may contact me at my Council Office at (808) 241-4188. You may also send any correspondence to me at the Office of the County Clerk, Council Services Division, whose address is listed above.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arthur Brun', with a large, stylized loop at the end.

ARTHUR BRUN  
Councilmember, Kaua'i County Council

JA:cy  
Enclosure

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_

**A BILL FOR AN ORDINANCE TO AMEND  
THE KAUA'I COUNTY CODE 1987, AS AMENDED,  
BY REPEALING ARTICLE 23 OF CHAPTER 22, RELATING TO  
PESTICIDES AND GENETICALLY MODIFIED ORGANISMS**

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BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. Findings and purpose. The Kaua'i County Council finds that by Judgment issued in Syngenta Seeds, Inc., et al. v. County of Kaua'i, Civ. No. 14-00014 BMK (D. Haw. filed Aug. 25, 2014), the Court declared Ordinance No. 960, codified as Chapter 22, Article 23 of the Kaua'i County Code 1987, as amended, "is preempted by state law and is therefore invalid." On November 18, 2016, the District Court's Judgment was affirmed by the United States Court of Appeals for the Ninth Circuit in Syngenta Seeds, Inc., et al. v. County of Kaua'i et al., No. 14-16833, D.C. No. 1:14-cv-00014-BMK. Accordingly, the purpose of this Bill is to repeal the invalid law.

SECTION 2. Chapter 22, Article 23 of the Kaua'i County Code 1987, as amended, is hereby repealed in its entirety.

SECTION 3. In place of the repealed Chapter 22, Article 23 of the Kaua'i County Code 1987, as amended, Article 23 shall be designated as reserved.

SECTION 4. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

SECTION 5. This Ordinance shall take effect upon its approval.

Introduced by:

  
MEL RAPOZO

  
ROSS KAGAWA

DATE OF INTRODUCTION:

Lihue, Kaua'i, Hawai'i

V:\BILLS\2016-2018 TERM\Repeal KCC Ch 22 Art 23 Ord 960 JA\_dmc.docx

Proposed Draft Bill (No. 2643)

January 5, 2017

Kanani Fu  
4972 Laukona Street  
Lihue, HI 96766



County of Kauai Office of Boards & Commissions  
Board of Ethics  
4444 Rice Street, Suite 150  
Lihue, HI 96766

Dear Board of Ethics members,

I am the sole care giver to my father, who suffers from ongoing medical and health problems. As a United States Veteran, my father receives a housing voucher from the Department of Veterans Affairs (VA) under the VASH Program. Due to his health and need for ongoing medical care, it is in my father's best interest that he resides with me so I can care for him. My father's housing voucher would come to me as payment to offset his living costs. The VA supports this as I can provide my father with a stable living situation and at the same time provide him with ongoing care.

In the State of Hawaii, the VASH Program is administered through a partnership between the VA and the State Hawaii Housing Public Authority (HPHA). Because HPHA is located on O'ahu, HPHA contracts certified Housing Authorities (HA) on the outer islands to administer the VASH Program. On Kauai, HPHA contracts the Kauai County Housing Agency (KCHA), as it is the only certified HA in this County. Under this partnership, HPHA pays KCHA an administrative fee to administer the rent voucher. KCHA does not influence the policies of the VASH Program, determine the program participants, or the set the voucher amounts because the VASH Program rests under the authority of HPHA.

As the Housing Director of KCHA, I oversee and approve administrative facets pertaining to KCHA and its programs. The VASH Program is not one of KCHA's programs per se, but a program under the authority of a separate entity. I have requested and have received a waiver by the Housing Choice Voucher (HCV) Program Manager from CFR 982.161 item 3, which "prohibits the tenancy of the unit if the owner is any public official, member of a governing body, or State of local legislators, who exercises functions or responsibilities with respect to the program."

I am requesting an advisory opinion on whether I have a conflict of interest under the Code of Ethics in holding the position as the Housing Director for KCHA and the granting of my request to waive CFR 982.161 item 3. Ultimately, I want to ensure that by accepting my father's housing voucher for the VASH program, I am free of any conflicts of my professional capacity. For your consideration, I have attached a letter from me to the HCV Program Manager dated 12/27/2017 requesting a waiver and a response letter to me dated 12/28/2018 that grants my request.

Sincerely,

Kanani Fu

attach

RAO 2017-002

December 27, 2016

COUNTY OF KAUAI  
HOUSING AGENCY



Kanani Fu  
4972 Laukona Street  
Lihue, HI 96766

16 DEC 28 P3:22

Kauai County Housing Agency  
Housing Choice Voucher Rental Assistance  
Bricen Moritsugu, HCV Program Manager  
4444 Rice Street, Suite 330  
Lihue, HI 96766

Dear Mr. Moritsugu,

On Wednesday 12/21/2016, my father, Donald Kagawa, was involved in a motor vehicle accident as a pedestrian struck by a moving vehicle. As a result, Donald sustained a fractured hip, internal bleeding due to trauma and overall body contusions. He has since undergone 2 surgeries, a hip fracture repair and a laparotomy. Dependent on his recovery progress, Donald may require additional surgical procedures. As a result of this accident, Donald will require ongoing medical attention, home health services, and caregiver services to recover and to stay alive.

Donald is a United States Veteran and can receive medical and social services assistance from the Department of Veterans Affairs. One type of assistance is a Housing Voucher through the VASH program that will provide him with a rental subsidy. The Veterans Affairs will allow for Donald to utilize his rental subsidy and reside with me as I am (and has always been) his sole care giver. Consequently, without a place of residence, Donald will not be able to receive the ongoing medical attention and home health services that the Veterans Affairs is able to provide and he will not recover.

In my capacity and the Housing Director, I oversee the administrative facets pertaining to the Housing Agency, its programs, and its employees. The Housing Agency is structured that Division Managers, such as yourself, manage and administer the program. And though I oversee the Housing Agency, I do not consider my role as an influence of the Housing programs mainly because the Housing Agency programs are administered using Federal guidelines and Administrative Rules that have been adopted through public hearings and approved by our elected officials including the Kauai County Council and the Mayor.

Taking all of the above into consideration, I would like to request a waiver of 24 CFR 982.161 item 3, which "prohibits the tenancy of the unit if the owner is any public official, member of a governing body, or State or local legislators, who exercises functions or responsibilities with respect to the programs." In the past, the County Housing Agency, through the approval of the Housing Choice Voucher Program Manager, has granted such waivers.

Shall my request be granted by you, the Manager, I will then pursue an advisory opinion from the County of Kauai Board of Ethics Commission on whether I have a conflict of interest under the Code of Ethics. Thank you for your consideration.

Sincerely,

Kanani Fu

**Bernard P. Carvalho, Jr.**  
Mayor

**Wallace G. Rezentes, Jr.**  
Managing Director



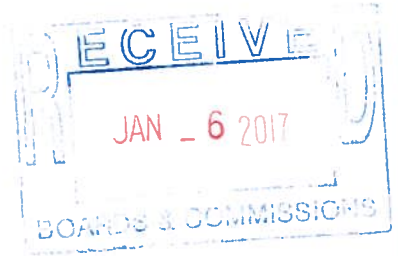
**Kanani Fu**  
Housing Director

**KAUA'I COUNTY HOUSING AGENCY**

Rental Assistance Division

County of Kaua'i, State of Hawai'i

Pi'ikoi Building 4444 Rice Street Suite 330 Lihue, HI 96766  
TEL (808) 241-4440 FAX (808) 241-5119



December 28, 2016

Kanani Fu  
4972 Laukona Street  
Lihue, HI 96766

**Re: REQUEST TO WAIVE 24 CFR 982.161 ITEM 3  
PERTAINING TO THE HOUSING CHOICE VOUCHER PROGRAM**

Dear Ms. Fu,

In response to your request dated December 27, 2016, to waive 24 CFR 982.161 Item 3 pertaining to the Housing Choice Voucher Program, I have taken into consideration the Program's Administrative Plan Federal regulations governing the Housing Choice Voucher (HCV) Program, and the reference material from our training provider Nan McKay & Associates (NMA) in rendering the following decision:

Your father, Donald Kagawa, is eligible for a Veterans Affairs Supportive Housing (VASH) voucher and will not be utilizing a Housing Choice Voucher approved by the Kauai County Housing Agency (Housing Agency). Firstly, we recognize that Mr. Kagawa is not a regular HCV voucher holder through the Housing Agency, but rather a VASH voucher holder through the US Department of Veterans Affairs (VA). Secondly, the VASH Program is a partnership between the VA and the US Department of Housing & Urban Development (HUD) aimed at providing rental subsidy assistance to eligible veterans. In Hawaii, VASH voucher holders are under the authority of the State of Hawaii Public Housing Authority (HPHA) located on Oahu. Due to our State's unique makeup of islands, HPHA partners with County Housing Agencies to administer the VASH voucher. Once HPHA approves a VASH voucher, the County Housing Agencies then administer the voucher. HPHA reimburses the County Housing Agencies for administrative fees pertaining to the VASH voucher on HPHA's behalf.

Based on the above, I do not consider the Housing Director to have an influence on the policies of the VASH Program because it is under the authority of HPHA and not the Housing Agency. In addition, the Housing Agency is structured such that program policy and decisions including day-to-day operations fall under the purview of the respective Division Managers.

In conclusion, in considering the aforementioned and a review of the information presented, I am inclined to grant your request to waive 24 CFR 982.161 Item 3 upon your receipt of a "No Conflict" Advisory Opinion from the Kauai County Board of Ethics.

Sincerely,

A handwritten signature in black ink, appearing to read "Brice Moritsugu".

**Brice Moritsugu**  
Housing Choice Voucher Program Manager



*An Equal Opportunity Employer*